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**Macmillan Publishing, Inc. and Union of Needletrades, Industrial & Textile Employees, Midwest Region, AFL-CIO-CLC. Case 25-CA-26182**

October 30, 1998

**DECISION AND ORDER**

BY MEMBERS FOX, LIEBMAN, AND HURTGEN

Pursuant to a charge and amended charge filed on August 18 and September 3, 1998, respectively, the Acting General Counsel of the National Labor Relations Board issued a complaint and notice of hearing on September 4, 1998, alleging that the Respondent has violated Section 8(a)(5) and (1) of the National Labor Relations Act by refusing the Union's request to bargain and to furnish necessary and relevant information following the Union's certification in Case 25-RC-9681. (Official notice is taken of the "record" in the representation proceeding as defined in the Board's Rules and Regulations, Secs. 102.68 and 102.69(g); *Frontier Hotel*, 265 NLRB 343 (1982).) The Respondent filed an answer with defenses admitting in part and denying in part the allegations in the complaint.

On October 2, 1998, the Acting General Counsel filed a Motion to Strike Portions of Respondent's Answer and Motion for Summary Judgment. On October 6, 1998, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed a response.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.<sup>1</sup>

**Ruling on Motion for Summary Judgment**

In its answer the Respondent admits its refusal to bargain and to furnish information that is relevant and necessary to the Union's role as bargaining representative but attacks the validity of the certification of the Union based on the Board's action in conducting the second election on which this certification is based and on the Board's unit determination in the underlying representation proceeding. The Respondent admits it has failed to bargain in good faith with the Union in order to test the Union's certification.

All representation issues raised by the Respondent were or could have been litigated in the prior representation proceeding. The Respondent does not offer to adduce at a hearing any newly discovered and previously unavailable evidence, nor does it allege any special circumstances that would require the Board to reexamine

the decision made in the representation proceeding. We therefore find that the Respondent has not raised any representation issue that is properly litigable in this unfair labor practice proceeding. See *Pittsburgh Plate Glass Co. v. NLRB*, 313 U.S. 146, 162 (1941).

We also find that there are no issues warranting a hearing with respect to the Union's request for information. As set forth in the Acting General Counsel's Motion, in its letter dated July 10, 1998, the Union requested the Respondent to provide the following information:

1. A list of current employees including their names, dates of hire, rates of pay, job classification, last known address, phone number, date of completion of any probationary period, and Social Security number;
2. A copy of all current company personnel policies, practices or procedures;
3. A statement and description of all company personnel policies, practices or procedures other than those mentioned in Number 2 above;
4. A copy of all company fringe benefit plans including pension, profit sharing, severance, stock incentive, vacation, health and welfare, apprenticeship, training, legal services, child care or any other plans which relate to the employees;
5. Copies of all current job descriptions;
6. Copies of any company wage or salary plans;
7. Copies of all disciplinary notices, warnings or records of disciplinary personnel actions for the last year.
8. A statement and description of all wage and salary plans which are not provided under number 6 above.

The complaint alleges, and the Respondent's answer admits, that the Union requested information that would be relevant for bargaining and that it has refused to furnish the information.

Accordingly, we grant the Motion for Summary Judgment<sup>2</sup> and will order the Respondent to bargain and to furnish the requested information.

On the entire record, the Board makes the following

**FINDINGS OF FACT**

**I. JURISDICTION**

At all material times, the Respondent, a corporation, with an office and place of business in Indianapolis, Indiana, has been engaged in the business of the wholesale distribution and sale of books and reference materials.

During the 12-month period ending July 31, 1998, the Respondent, in conducting its business operations described above, purchased and received at its Indianapolis,

<sup>1</sup> Member Hurtgen did not participate in the underlying representation case. He agrees for institutional reasons with this decision because the Respondent has not raised any new matters in this proceeding.

<sup>2</sup> Inasmuch as we have granted the General Counsel's Motion for Summary Judgment, it is unnecessary to rule on the Motion to Strike Portions of the Respondent's Answer.

Indiana facility goods valued in excess of \$50,000 directly from points outside the State of Indiana.

We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

## II. ALLEGED UNFAIR LABOR PRACTICES

### A. *The Certification*

Following the second election held June 11, 1998, the Union was certified on June 30, 1998, as the exclusive collective-bargaining representative of the employees in the following appropriate unit:

All full-time and all regular part-time warehouse and distribution center employees employed by the Respondent at its Northwest Boulevard and Rockville Road, Indianapolis, Indiana facilities, including employees occupying the job classifications of Picker/Packer, Stocker/Trucks and Supervisor, BUT EXCLUDING all Order Management employees (including employees who occupy the classifications of New Title Coordinator, New Title Assistant, Proof of Delivery Clerk, Sales Support Coordinator and Sales Support Representative), all Customer Operations employees (including employees who occupy the classifications of 800 Line Representative and Customer Service Representative), all clerical employees, salespersons, professional employees, guards and supervisors as defined in the Act.

The Union continues to be the exclusive representative under Section 9(a) of the Act.

### B. *Refusal to Bargain*

About July 10, 1998,<sup>3</sup> the Union, by letter, has requested the Respondent to recognize and bargain and to furnish information, and, since about July 10, 1998, and more particularly by letter dated August 14, 1998, the Respondent has failed and refused. We find that this refusal constitutes an unlawful refusal to bargain in violation of Section 8(a)(5) and (1) of the Act.

## CONCLUSIONS OF LAW

By failing and refusing on and after July 10, 1998, to bargain with the Union as the exclusive collective-bargaining representative of employees in the appropriate unit and to furnish the Union requested information, the Respondent has engaged in unfair labor practices affect-

ing commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

## REMEDY

Having found that the Respondent has violated Section 8(a)(5) and (1) of the Act, we shall order it to cease and desist, to bargain on request with the Union, and, if an understanding is reached, to embody the understanding in a signed agreement. We also shall order the Respondent to furnish the Union the information requested.

To ensure that the employees are accorded the services of their selected bargaining agent for the period provided by the law, we shall construe the initial period of the certification as beginning the date the Respondent begins to bargain in good faith with the Union. *Mar-Jac Poultry Co.*, 136 NLRB 785 (1962); *Lamar Hotel*, 140 NLRB 226, 229 (1962), *enfd.* 328 F.2d 600 (5th Cir. 1964), *cert. denied* 379 U.S. 817 (1964); *Burnett Construction Co.*, 149 NLRB 1419, 1421 (1964), *enfd.* 350 F.2d 57 (10th Cir. 1965).

## ORDER

The National Labor Relations Board orders that the Respondent, MacMillan Publishing, Inc., Indianapolis, Indiana, its officers, agents, successors, and assigns, shall

### 1. Cease and desist from

(a) Failing and refusing to recognize and bargain with Union of Needletrades, Industrial & Textile Employees, Midwest Region, AFL-CIO-CLC, as the exclusive bargaining representative of the employees in the bargaining unit, and failing and refusing to furnish the Union information that is relevant and necessary to its role as the exclusive bargaining representative of the unit employees.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

### 2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain with the Union as the exclusive representative of the employees in the following appropriate unit on terms and conditions of employment, and if an understanding is reached, embody the understanding in a signed agreement:

All full-time and all regular part-time warehouse and distribution center employees employed by the Respondent at its Northwest Boulevard and Rockville Road, Indianapolis, Indiana facilities, including employees occupying the job classifications of Picker/Packer, Stocker/Trucks and Supervisor, BUT EXCLUDING all Order Management employees (including employees who occupy the classifications of New Title Coordinator, New Title Assistant, Proof of Delivery Clerk, Sales Support Coordinator and Sales Support Representative), all Customer Operations employees (including employees who occupy the classifica-

<sup>3</sup> The Respondent admits that by letter dated July 10, 1998, the Union requested bargaining and that by letter dated August 14, 1998, it has declined to bargain and to furnish information. Although the Respondent claims that prior to August 14, 1998 "it had taken no position in response to the Union's request," by virtue of the Union's certification the Respondent was obligated to bargain with the Union on request. We therefore find that the Respondent has failed and refused to bargain and to provide information since on or about July 10, 1998.

cations of 800 Line Representative and Customer Service Representative), all clerical employees, salespersons, professional employees, guards and supervisors as defined in the Act.

(b) Furnish the Union the information that it requested on July 10, 1998.

(c) Within 14 days after service by the Region, post at its facility in Indianapolis, Indiana, copies of the attached notice marked "Appendix."<sup>4</sup> Copies of the notice, on forms provided by the Regional Director for Region 25 after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since July 10, 1998.

(d) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. October 30, 1998

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Sarah M. Fox,	Member
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Wilma B. Liebman,	Member
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Peter J. Hurtgen,	Member
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(SEAL) NATIONAL LABOR RELATIONS BOARD

#### APPENDIX

NOTICE TO EMPLOYEES  
POSTED BY ORDER OF THE  
NATIONAL LABOR RELATIONS BOARD  
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT refuse to bargain with Union of Needletrades, Industrial & Textile Employees, Midwest Region, AFL-CIO-CLC, as the exclusive representative of the employees in the bargaining unit, and WE WILL NOT refuse to furnish the Union information that is relevant and necessary to its role as the exclusive bargaining representative of the unit employees.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, bargain with the Union and put in writing and sign any agreement reached on terms and conditions of employment for our employees in the bargaining unit:

All full-time and all regular part-time warehouse and distribution center employees employed by us at its Northwest Boulevard and Rockville Road, Indianapolis, Indiana facilities, including employees occupying the job classifications of Picker/Packer, Stocker/Trucks and Supervisor, BUT EXCLUDING all Order Management employees (including employees who occupy the classifications of New Title Coordinator, New Title Assistant, Proof of Delivery Clerk, Sales Support Coordinator and Sales Support Representative), all Customer Operations employees (including employees who occupy the classifications of 800 Line Representative and Customer Service Representative), all clerical employees, salespersons, professional employees, guards and supervisors as defined in the Act.

WE WILL furnish the Union the information it requested on July 10, 1998.

MACMILLAN PUBLISHING, INC.

<sup>4</sup>If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."